

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LONNIE LASENBBY,

Plaintiff,

vs.

STATE FARM FIRE & CASUALTY, *et al.*,

Defendants.

Case No. 2:13-cv-2338-JAD-VCF

ORDER

This matter involves Plaintiff Lonnie Lasenbby's breach of contract action against State Farm. Before the court is Defendant State Farm's motion to stay proceedings pending resolution of State Farm's motion for summary judgment (#34). Lasenbby filed an opposition (#36); and State Farm replied (#37). For the reasons stated below, State Farm's motion to stay is denied.

On November 7, 2012, Lasenbby filed his complaint in state court. (*See* Compl. #1-1). On December 26, 2013, State Farm removed the action to this court. (*See* Pet. For Removal #1). There is no other pending state court action. (*See generally* Docs. #34, #36). Nonetheless, State Farm moves the court to stay proceedings under the doctrine of abstention.

State Farm's motion is denied. Abstention refers to equitable doctrines based on federal-state comity. *See, e.g., Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941); *Younger v. Harris*, 401 U.S. 37 (1971); *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943); *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976). Therefore, abstention is only applicable where "there are ongoing state judicial proceedings." *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008). Here, there are none.

1 State Farm's reply brief asserts that "[e]ven without application of the abstention doctrine" the
2 court "has authority to issue a stay and should do so given that State Farm's Motion for Summary
3 Judgment would be dispositive of this **entire** case." (Def.'s Reply (#37) at 3:14–16) (emphasis original)
4 (string citation omitted). The additional bases for a stay that are cited in State Farm's reply were not
5 raised in its opening brief. These arguments were waived. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir.
6 2007) ("The district court need not consider arguments raised for the first time in a reply brief.");
7 *Sophanthavong v. Palmateer*, 378 F.3d 859, 871-72 (9th Cir. 2004) (refusing to reach argument raised
8 for the first time in a reply brief); *Bazuaye v. I.N.S.*, 79 F.3d 118, 120 (9th Cir. 1996) (per curiam)
9 ("Issues raised for the first time in the reply brief are waived.").

10 ACCORDINGLY, and for good cause shown,

11 IT IS ORDERED that State Farm's motion to stay (#34) is DENIED.

12 IT IS SO ORDERED.

13 DATED this 15th day of July, 2014.

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17 CAM FERENBACH
18 UNITED STATES MAGISTRATE JUDGE
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